

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MARC ELLIOT,

Plaintiff,

v.

HBO HOME ENTERTAINMENT CORP., a
Delaware Corporation; JEHANE
NOUJAIME, an individual; KARIM AMER,
an individual; THE OTHRS, LLC, a Florida
limited liability company; THE OTHRS
LICENSING CORP., a Florida corporation;
THE SQUARE, LLC, a New York limited
liability company; ISABELLA
CONSTANTINO, an individual; JOHN
DOES 1–10,

Defendants.

Case No. 4:23-cv-1611

State Court Case No. 2322-CC09423

NOTICE OF REMOVAL

Defendant Home Box Office, Inc. (“HBO,” incorrectly sued as “HBO Home Entertainment Corp.”), with consent of all other Defendants who have been served with process, namely, The Othrs Licensing Corp., The Othrs, LLC, The Square, LLC, Karim Amer, Jehane Noujaim (incorrectly sued as “Jehane Noujaime”), and Isabella Constantino (collectively, “Co-Defendants”), by and through undersigned counsel, hereby removes the above-styled case from the Circuit Court for the City of St. Louis, Missouri, Case No. 2322-CC09423, to the United States District Court for the Eastern District of Missouri, Eastern Division, pursuant to 28 U.S.C. §§ 1332(a), 1441(b), and 1446. This case is being removed to this Court because, based on the allegations Plaintiff Marc Elliot asserts in this action, there is complete diversity of citizenship

between the parties and more than \$75,000 in controversy (exclusive of interest and costs). As grounds for removal, HBO states as follows:

INTRODUCTION

1. On October 31, 2023, Plaintiff filed a two-count Complaint against HBO and Co-Defendants, along with ten unnamed John Doe defendants, for (1) violating his rights of privacy and publicity under Missouri and New York law; and (2) civil conspiracy under Missouri law. This lawsuit is currently pending in the Circuit Court for the City of St. Louis, State of Missouri, as Case No. 2322-CC09423.

2. This lawsuit arises out of Episode 3, Season 2 of a documentary series called *The Vow*, which contains a recording of a call between Plaintiff and Defendant Isabella Constantino. (See Complaint, ¶¶ 25, 41–47). Plaintiff alleges that the call was recorded and used in *The Vow* without his consent. (*Id.*)

3. The state court issued summonses on November 2, 2023. HBO was the first defendant served; it received service on November 15, 2023.

4. As set forth more fully below, this action is one that HBO may remove to this Court under 28 U.S.C. § 1441(b). HBO has complied with the procedural requirements of 28 U.S.C. § 1446, and this Court would have original jurisdiction over the action under 28 U.S.C. § 1332(a) because complete diversity exists and the amount in controversy exceeds \$75,000.

TIMELINESS OF REMOVAL

5. HBO was served on November 15, 2023, triggering a thirty-day removal period. See *Harris v. Monumental Life Ins. Co.*, 2006 WL 1663510, at *3 (E.D. Mo. 2006). Therefore, the thirty-day period expires on December 15, 2023.

6. No named defendant has filed any responsive pleadings in the Circuit Court for the City of St. Louis, State of Missouri prior to filing this Notice of Removal.

7. The action is thus timely removed pursuant to 28 U.S.C. § 1446(b)(1).

CONSENT TO REMOVAL

8. All served defendants have joined in or consented to the removal of this action. *Id.* § 1446(b)(2). Only defendants Noujaim and Amer have not been served.

COMPLIANCE WITH REMOVAL PROCEDURES

9. Pursuant to 28 U.S.C. § 1446(d) and E.D. Mo. Rules 2.02 and 2.03, copies of the following are attached to this Notice of Removal:

- a. The complete file from the State Court, all summons and return of summons (if any), process, pleadings, and orders served upon HBO in the case, is attached hereto as Exhibit A.
 - b. The Original Filing Form is attached hereto as Exhibit B.
 - c. The Civil Cover Sheet is attached hereto as Exhibit C.
10. The Disclosure Statement will be filed promptly as required by E.D. Mo. Loc. Rs. 2.02, 2.09.

GROUND FOR REMOVAL BASED ON DIVERSITY

11. Under 28 U.S.C. § 1441(a), “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.”

12. Removal based on diversity jurisdiction is proper where: (1) the action is between citizens of different states; and (2) the amount in controversy exceeds \$75,000 exclusive of interest and costs. 28 U.S.C. §§ 1332(a), 1441(b).

13. Removal of this action is proper under 28 U.S.C. §§ 1441(a) and 1332(a) because complete diversity of citizenship exists between Plaintiff and all Defendants and the amount in controversy in this matter exceeds \$75,000, exclusive of interest and costs.

14. Plaintiff is a citizen of Missouri. (Complaint ¶ 2.)

15. Defendant Home Box Office, Inc. is a citizen of the State of Delaware, where it is incorporated, and of the State of New York, where its principal place of business is located. 28 U.S.C. § 1332(c).

16. Co-Defendants' citizenship is as follows:

- (a) Defendant The Othrs Licensing Corp. is citizen of the State of Florida, where it is incorporated, and of the State of New York, where its principal place of business is located. 28 U.S.C. § 1332(c).
- (b) Defendant Karim Amer is a citizen of the State of New York. He does not reside in the State of Missouri.
- (c) Defendant Jehane Noujaim is citizen of the State of New York. She does not reside in the State of Missouri.
- (d) Defendant The Othrs, LLC, is a limited liability company whose sole members are Defendants Amer and Noujaim. It is thus a citizen of the State of New York. *See OnePoint Sols., LLC v. Borchert*, 486 F.3d 342, 346 (8th Cir. 2007) ("An LLC's citizenship, for purposes of diversity jurisdiction, is the citizenship of each of its members.")
- (e) Defendant The Square, LLC is a limited liability whose sole member is Noujaim Films, Inc., a New York corporation whose principal place of business is in New York. It is thus a citizen of the State of New York. *See id.*
- (f) Defendant Isabella Constantino is a citizen of the State of New York. She does not reside in the State of Missouri.
- (g) Defendants John Does 1–10, as parties with fictitious names, may be disregarded in assessing diversity. 28 U.S.C. § 1441(b)(1).

17. Complete diversity thus exists under 28 U.S.C. § 1332(a) because “no defendant holds citizenship in the same state where any plaintiff holds citizenship.” *OnePoint Sols.*, 486 F.3d at 346; *see also* 28 U.S.C. § 1332(a)(1).

18. The Complaint seeks damages “in excess of \$75,000.” (Compl. at 11, wherefore cl. 2). As such, the amount in controversy thus exceeds \$75,000. *See* 28 U.S.C. § 1446(c)(2) (“If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy . . .”).

FILING OF REMOVAL PAPERS

19. Pursuant to 28 U.S.C. § 1446(d) and E.D. Mo. Loc. R. 2.03, written notice of removal of this case is being given simultaneously to Plaintiff, and a Notice of Filing Notice of Removal is being filed with the State Court. HBO will promptly file proof of filing a notice with the Clerk of the state court and proof of service on all adverse parties.

CONCLUSION

Plaintiff is a citizen of Missouri, and no defendant is also a citizen of Missouri. Moreover, the amount in controversy exceeds \$75,000, exclusive of costs and interests, and, therefore, HBO. has met its burden to show that removal is proper.

WHEREFORE, Defendant Home Box Office, Inc. removes this case to the United States District Court for the Eastern District of Missouri, respectfully requests that no further proceedings be had in the Circuit Court for the City of St. Louis, State of Missouri, and prays for such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: December 15, 2023

By: /s/ Joseph E. Martineau

Joseph E. Martineau, #32397MO

Kolten C. Ellis, #74451MO

LEWIS RICE LLC

600 Washington Avenue, Suite 2500

St. Louis, Missouri 63101

Telephone: (314) 444-7600

Facsimile: (314) 612-2042

jmartineau@lewisrice.com

kellis@lewisrice.com

Attorneys for Home Box Office, Inc.

CERTIFICATE OF SERVICE

The undersigned certifies that on this 15th day of December, 2023, a true copy hereof was served via electronic mail and U.S. mail, first-class postage prepaid, on the following:

Marc Elliot
5655 Pershing Ave, Apt. 529
St. Louis, MO 63112
Telephone: (314) 252-0579
marc@marcelliot.com

Plaintiff, pro se

/s/ Joseph E. Martineau